

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the matter of Gersick Enterprises and Terry Libbon,) **COMPLAINT NO. 6-98-82:**
Violation of Section 13267 of the California Water Code) **FOR ADMINISTRATIVE**
WDID NO. 6A099811N03) **CIVIL LIABILITY**

**ISSUED TO GERSICK ENTERPRISES AND TERRY LIBBON,
YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are charged with a violation of provisions of law, or orders of the Regional Water Quality Control Board, Lahontan Region (Regional Board), for which the Regional Board may impose administrative civil liability pursuant to the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The hearing is scheduled for January 13 and 14, 1998 in South Lake Tahoe, California. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. **Gersick Enterprises and Terry Libbon** violated the following provision of law and an order of the Regional Board:

Section 13267, California Water Code (CWC)

The Regional Board Executive Officer issued a letter to Gersick Enterprises and Terry Libbon on June 26, 1998 that contained the following directive:

- “4. By **August 10, 1998**, submit a technical report that describes cleanup and abatement actions at the car wash. Include the investigation results of new off-site monitoring wells approved in staff’s May 11, 1998 letter, and describe the lateral and vertical extent of contamination. Discuss cost effective options to cleanup contamination not affected by the on-site remediation system. If the boundaries of contamination were not defined, enclose a workplan for additional investigations.”

Gersick Enterprises and Terry Libbon violated Item No. 4 by failing to submit to the Regional Board a technical report that describes cleanup and abatement actions at the Lake Tahoe Car

Wash, the investigation results of new off-site monitoring wells, the lateral and vertical extent of ground water contamination, and cost effective options for off-site remediation.

5. The following facts are the basis for the violation of CWC, Section 13267. These findings are based on information provided by Gersick Enterprises (R. Gersick, W. Edwards, and M. Bird), Gersick Enterprises' legal advisor, the Law Offices of Michael P. Hamsch (B. Blechschmidt, Esq.), Gersick Enterprises' consultant, Terra Vac (S. Alton), Terry Libbon, the El Dorado County Department of Environmental Management (V. Huber), and information ascertained by Regional Board staff.

On May 26, 1998, the Regional Board received the document, "Second Quarter 1998, Operations, Maintenance, and Monitoring Report" for the Lake Tahoe Car Wash (formerly called Jet-Thru Car Wash), at 3668 Lake Tahoe Boulevard, South Lake Tahoe. The report was submitted by Terra Vac for Gersick Enterprises. The report documented corrective actions undertaken at the site for past petroleum discharges to soil and ground water. Monitoring well data for April 1998 however showed a significant increase in petroleum hydrocarbon concentration in both on-site and off-site sampling locations. MTBE was detected in ground water in the area of the dispenser islands at 18,000 µg/l, substantially exceeding the state drinking water action level of 35 µg/l. Benzene was detected in ground water at an off-site location at 1,200 µg/l, substantially above the state drinking water maximum contaminant level of 1 µg/l. The information in the report indicated that current remedial measures were not containing the petroleum ground water plume from migrating and that a new release of gasoline occurred or is occurring at the site.

The Regional Board Executive Officer sent a letter, dated June 26, 1998, to William Edwards, President of Gersick Enterprises, and Terry Libbon, the operator of the gas station and car wash, to submit technical documents to the Regional Board by specific deadlines. The responsible parties were directed to submit: (1) a workplan to determine if a leak in the underground storage tank/piping system exists at the car wash, (2) a report with the results of activities to determine whether a leak exists, (3) a workplan describing proposed actions to contain the ground water plume from migrating, and (4) a report that describes: a) cleanup and abatement actions at the car wash, b) the investigation results of new off-site monitoring wells, c) the lateral and vertical extent of ground water contamination, and d) cost effective options for off-site remediation.

On July 10, 1998, the Regional Board received a facsimile entitled, "Workplan, UST Leak Detection, Off-site Migration Containment and Off-site Plume Delineation," from Terra Vac. The workplan proposed actions to determine whether a leak existed in the underground storage tank/piping system. The workplan recommended installing and operating a dual vapor extraction system to contain the ground water plume from migrating. Lastly, the workplan proposed an investigation to define the lateral and vertical extent of the ground water plume. Board staff conditionally approved tasks in the workplan in a letter, dated July 20, 1998.

The Regional Board received the document titled, "Leak Investigation Results Report," by Terra Vac, on August 11, 1998. The report described actions undertaken to identify whether a leak had occurred or is occurring at the gas station. The report concluded that

gasoline releases were likely caused by poor procedures for change outs of dispenser pump filters. The problem was resolved by instructing gas station personnel on the proper way to change dispenser pump filters without causing releases to the environment. The report however did not contain information required in Item No. 4, in the Regional Board Executive Officer's June 26, 1998 letter. The missing information included implementation of cleanup and abatement actions, the results of additional ground water investigations, the definition of the petroleum plume, and cost effective options for off-site remediation.

The ground water remediation system was installed at the car wash by late September 1998 but has never operated. Gersick Enterprises delayed in submitting an application to the local air pollution control office until October 28, 1998, to operate the remediation system. The dischargers are awaiting approval by the air pollution control office to begin operating the remediation system.

PROPOSED CIVIL LIABILITY

6. For the failure to submit a technical report, the Regional Board may impose administrative civil liability under the following section:

Pursuant to Section 13268(b)(1) of the California Water Code, any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267...civil liability may be administratively imposed by a regional board...in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

7. In this matter, Regional Board staff have determined that Gersick Enterprises and Terry Libbon violated a directive by the Regional Board Executive Officer from August 11 to November 18, 1998, when this complaint was prepared. Therefore, the maximum administrative civil liability pursuant to Section 13268(b)(1) for 100 days of violation is one hundred thousand dollars (\$100,000).

8. Pursuant to Section 13327 of the CWC, the Executive Officer has considered the following factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violation or violations;

The violation is of a very serious nature, involving discharge of petroleum products to ground water in violation of the California Water Code and waste discharge prohibitions in the 1995 *Water Quality Control Plan for the Lahontan Region*. The extent of the petroleum plume in ground water has not been defined by the responsible parties. The Lake Tahoe Car Wash is located within 600 feet of Lake Tahoe.

- b. Whether the discharge is susceptible to cleanup or abatement;

Ground water containing dissolved petroleum products is susceptible to cleanup and abatement. Even though a ground water remediation system has been

installed at the car wash since late-September 1998, the responsible parties have not begun clean up of contaminated ground water.

- c. The degree of toxicity of the discharge;

Ground water at and beyond the subject property contains petroleum products (including benzene and toluene) in amounts above drinking water standards. In addition, the level of MTBE in ground water both on site and off site exceeds the State of California Drinking Water Action Level.

- d. The violator's ability to pay;

Gersick Enterprises and Terry Libbon have not provided financial data to the Regional Board to show their inability to pay the proposed liability. However, based on past discussions with Board staff, it appears that both dischargers have limited financial capabilities.

- e. The effect on the violator's ability to continue business;

Gersick Enterprises and Terry Libbon have not provided financial data to the Regional Board to show the proposed liability will hinder their ability to continue in business. Yet, based on past discussions with Board staff, imposition of the maximum liability amount would, most likely, have a negative impact on the ability to continue in business at the Lake Tahoe Car Wash.

- f. Any voluntary cleanup efforts undertaken by the violator;

None. Actions taken to date, including installation of the ground water remediation system (not operational), were in response to Regional Board staff directives.

- g. Any prior history of violations;

Gersick Enterprises and Terry Libbon failed to submit documents to the Regional Board according to the schedule in the June 26, 1998 letter by the Executive Officer: (1) a workplan to determine if a leak in the UST/piping system exists at the car wash and (2) a technical report with the results of activities to determine whether a leak exists at the car wash. The above documents were submitted late to the Regional Board by 4 days and 16 days, respectively. Furthermore, during the past three years, quarterly ground water monitoring reports have sporadically been received late by the Regional Board.

- h. The degree of culpability;

Gersick Enterprises is the land and facility owner of the Lake Tahoe Car Wash and Terry Libbon owns and operates the underground storage tanks. Therefore,

both parties are culpable for failing to provide a technical report by the deadline set by the Regional Board Executive Officer.

- i. Any economic savings for the violator resulting from the violation;

Economic savings from postponement of investigation and clean up costs are estimated at \$1,870. This amount is based on 8% interest earned on the estimated investigation and cleanup costs of \$70,000, since July 20, 1998 when Board staff approved the workplan for investigation and cleanup actions at the Lake Tahoe Car Wash.

- j. Other matters as justice may require.

Regional Board staff and the Executive Officer have spent time writing correspondence, conferring with the responsible parties, their consultant and representatives, conferring with interested public, conferring with the local public health agency, and issuing the administrative civil liability complaint. Estimated staff costs to date for preparation of the complaint are \$3,800.

The Executive Officer is imposing a \$100 per day liability amount for the first 60 days of violation and a \$200 per day liability amount for the next 40 days of violation.

- 9. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of **\$14,000**, pursuant to CWC Section 13268(b)(1).

WAIVER OF HEARING

10. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the waiver and return it prior to the proposed hearing date, together with a cashier's check or money order for the amount of civil liability proposed in paragraph 9 above, to the following address:

California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Ordered by: _____ Dated: _____
HAROLD J. SINGER
EXECUTIVE OFFICER